

Bryon Nevius, *Sui Juris*, a man,  
Plaintiff

v.

Julie Tomlinson a woman, and coworkers, et  
al. as individuals; Internal Revenue Service  
A fictitious entity,  
Defendants.

Case No. 2:13-cv-04228-NKL

**Plaintiff's Motion To Vacate**

Judge: Nanette Laughrey

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI

**MOTION IN THE VACATE**

1. Pursuant to F.R.Civ P. rule 60(b)(4) Plaintiff moves to vacate this Court ORDER 4-24-2014 (Docket # 39) of dismissal on grounds that this Court has abridged this Plaintiffs **rights to due process of law** as expressed in the Federal Rules of Civil Procedure and Federal Rules of Evidence.

*Federal Rules of Civil Procedure 60 (b) (4) "Rather, it is well established that a judgment is void for purposes of only when the court that rendered the judgment lacked jurisdiction or failed to act in accordance with due process of law." Wesco Products Co. v. Alloy Automotive Co., 880 F.2d 981*

**Brief In Support**

2 This Court is charged with the knowledge of law that a motion to dismiss which tenders for consideration of matter not of-record must be evaluated according to the summary judgment standard including all inferences must be made in the light most favorable to the non-moving party.

*Evers v. General Motors Corp., 770 F.2d 984 Conclusory allegations without specific supporting facts had no probative value.*

3. This Court, in its ruling presumed the following facts which were never in evidence:

(1) That the Defendant **Tomlinson** worked for **the United States Government**. In the defendant's Declaration (Docket # 25-1) Tomlinson NO WHERE states she is employed by the **United States Federal Government** and has the authority to search "any" of Plaintiffs records without first obtaining a Federal court order. It would have only taken a few more stokes of the key board to include this **extremely valuable information!**

1 And further, Defendant signed the document without a Notary Public witnessing her signature leaving serious  
2 doubt she is who she says she is?

3 ***Thomas v. IBM, 48 F.3d 478 "Her affidavit contained conclusory allegations without specific***  
4 ***supporting facts and thus lacked probative value."***

5 Defendant also stated in section 3 of the Declaration that: "In accordance with 26 USC § 7602." Plaintiffs  
6 further examination of the 26 USC § 7602 states.

7 (a) Authority to summon, etc.

8 For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining  
9 the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of  
10 any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized -

11 (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

12 (2) ***To summon the person liable for tax*** or required to perform the act, or any officer or employee of such  
13 person, or any person having possession, custody, or care of books of account containing entries relating to the  
14 business of the person liable for tax or required to perform the act, or any other person the Secretary may deem  
15 proper, to appear before the Secretary at a time and place named in the summons and to produce such books,  
16 papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such  
17 inquiry; and (3) To take such testimony of the person concerned, under oath, as may be relevant or material to  
18 such inquiry.

19 Therefore, Tomlinson must FIRST establish a liability BEFORE she can summons Plaintiff. He must be  
20 proven liable with evidence BEFORE he can be summoned. If Tomlinson does not meet the burden of proof  
21 in demonstrating a liability, then the summons is void. Furthermore, there are only three sections of the entire  
22 Internal Revenue Code that mention the term "liability", and they are:

23 26 U.S.C. Section 1441: Withholding of tax on nonresident aliens

24 26 U.S.C. Section 1442: Withholding of tax on foreign corporations

25 26 U.S.C. Section 1443: Foreign Tax Exempt Organizations

26 There are no implementing regulations under Title 26 that authorize Tomlinson to summons anyone.

27 ***"...we think it important to note that the Act's civil and criminal penalties attach only upon violation of***  
28 ***regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no***  
29 ***penalties on anyone."*** *California Bankers Assn. v. Shultz, 416 U.S. 21 (1974)*

30 All of the implementing regulations for 26 U.S.C. Section 7602 are associated with Title 27, which is the  
31 Bureau of Alcohol, Tobacco, and Firearms. Below is a list of the related parallel authorities for this section,  
32 ALL of which are related to Alcohol, Tobacco, and Firearms and NONE of which relate in any way with the  
33 individual income tax found in 26 U.S.C. Subtitle A:

34 27 CFR part 70

35 27 CFR part 170

36 27 CFR part 296

(2) That Tomlinson has sworn-to or subscribed to an oath to uphold the constitution, which if she is a United States Federal Government employee she is required to have it on file and produce it.

5 USC § 3331

*An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.*

(3) That Tomlinson was adhering to duties derived from statutes pursuant to a Treasury Delegation Order.

(4) That Tomlinson in the performance of her duties had Plaintiff's administrative file in hand including the statute which made this Plaintiff subject to and liable for a tax including **authenticated copies** of contracts in interstate commerce verifying that Plaintiff had derived taxable income from the contracts. Absent these proofs attached to an affidavit attested to by Tomlinson this Court has subject this **Plaintiff to sham legal process in violation of 18 U.S.C. 241**. The **massive conflict of interest** in this case has been astonishing.

4. Plaintiff also states **for the record** that he filed a Judicial Notice on 3-12-2014 (Docket # 30) and the Defendant has failed to rebut the following with any proof what so ever:

1.) Plaintiff is a taxpayer

*"The taxpayer-- that's someone who works for the federal government but doesn't have to take the civil service examination."*

*[President Ronald W. Reagan ]*

*"The revenue laws are a code or a system in regulation of tax assessment and collection. They relate to taxpayers, and not to non-taxpayers. The latter are without their scope. No procedures are prescribed for non-taxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither the subject nor the object of the revenue laws." Long v. Rasmussen, 281 F. 236, at 238*

2.) Defendant has offered NO proof she is a Government Agent with the proper authority to search any records.

*"Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. Federal Crop Insurance v. Merrill Et Al, 1947 U.S. 380; 68 S Ct.*

3.) There is any proof that Implementing Regulations are listed anywhere for U.S.C. Title 26 in the Federal Registry. *California Bankers Assn. v. Shultz, 416 U.S. 21 (1974)*

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**DECLARATION**

Fifteen days from the verifiable receipt of this motion, an order shall be prepared and submitted to this Court for ratification vacating this Court's order of dismissal unless before that time, Tomlinson submits her affidavit in re her employment, a certified copy of her oath to uphold the constitution, copies of all pages of all manuals including but not limited to the Internal Revenue Manual and Code of Federal Regulations proving that Tomlinson acts were within her authority as verified by the applicable treasury delegation order along with authenticated copies of one or more contracts in interstate commerce including citation of the statute which imposes a tax on the activity illustrated in the contracts. Absent all of these proofs, this Court is deemed to have conspired against the rights of this Plaintiff including willful oppression in office and extortion as provided for at 26 USC 7214(a)

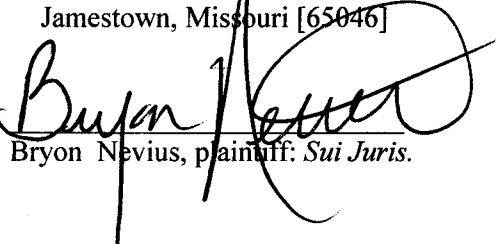
Dated May 7, 2014

Best regards,

Bryon Nevius, plaintiff: *Sui Juris*

21355 Hwy 179

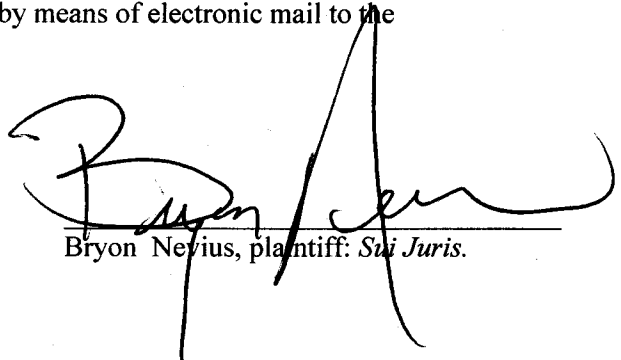
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Bryon Nevius, plaintiff: *Sui Juris*.

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**CERTIFICATE OF SERVICE**

A copy of this document will be sent by the Western District Court by means of electronic mail to the Defendants' using the CM/EFC system.

  
Bryon Nevius, plaintiff: *Sui Juris*.